

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

R.C. ASSOCIATES, INC.

and

SPRINKLER FITTERS LOCAL 536 a/w  
UNITED ASSOCIATION OF PLUMBERS  
PIPEFITTERS, SPRINKLER FITTERS  
AND APPRENTICES OF THE UNITED  
STATES AND CANADA, AFL-CIO

Cases 5-CA-31434  
5-CA-31445  
5-CA-31446  
5-CA-31447  
5-CA-31448  
5-CA-31449  
5-CA-31452  
5-CA-31453  
5-CA-31510  
5-CA-31574

*Thomas J. Murphy, Esq.,*  
for the General Counsel.  
*Lawrence E. Dube, Jr., Esq.,*  
(*Dube & Goodgal, PC*),  
of Baltimore, Maryland,  
for the Respondent.  
*Gabriel A. Terrasa, Esq.*  
(*Singleton & Gendler*),  
of Owings Mills, Maryland,  
for the Charging Party.

DECISION

Statement of the Case

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Baltimore, Maryland on April 14, 2004. The charges were filed by the Union, Sprinkler Fitters Local 536, a/w United Association of Plumbers, Pipefitters, Sprinkler Fitters and Apprentices of the United States and Canada, AFL-CIO in September, October, and November, 2003. Based upon the charges, an amended consolidated complaint issued on March 26, 2004, alleging that the Respondent, R.C. Associates, Inc., violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act), by coercively interrogating employees, by informing employees that the Company does not hire union members, and by refusing to consider for hire, and/or refusing to hire employees (Jason Brown, Michael Gamber, Craig Roemer, and Thomas Taylor), by reducing the hourly wages of Michael Genco, and terminating his employment, because the employees had engaged in concerted activities and supported the Union.

The Respondent filed an answer and an amended answer in a timely fashion.

After the hearing had opened and during the course of the proceeding, counsel for the Respondent stated for the record as follows (Tr. 57):

Your Honor, based on discussions that the Company representatives had off the record during the day, the Company has determined that it wishes to

move to withdraw its answer, actually the amended answer to the complaint in this case.

Counsel for the General Counsel then made the following statement:

5

Our position is that the withdrawal of the answer will be taken, if found by the Judge, to all allegations in the complaint and that the allegations in the complaint are uncontested by the Respondent. Further, all findings by the Judge will be based solely on the complaint and not based on an incomplete record, and that there would be no briefs filed, and I agree and would like Mr. Dube to agree to that on the record as a stipulation.

10

The Respondent's counsel agreed as follows:

15

That's acceptable since that is our understanding of the consequence of withdrawing the answer.

The Charging Party joined in the stipulation. In accordance with Section 102.25 of the Board's Rules and Regulations, I granted the Respondent's motion (Tr. 58):

20

I have considered this motion and the response by the General Counsel and the Charging Party, and it's my determination that I will grant the Respondent's motion of withdrawing the answer and the amended answer, and I will then proceed accordingly in accordance with the rules of the National Labor Relations Board and the applicable statutes.

25

On the entire record, I make the following

#### Findings of Fact

30

##### I. Jurisdiction

At all material times, the Respondent, R.C. Associates, Inc., a Maryland corporation with an office and place of business in Westminster, Maryland, has been engaged as a fire protection contractor in the construction industry, designing and installing sprinkler systems for commercial and residential construction.

35

During the preceding 12 months, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its Westminster, Maryland facility, products valued in excess of \$50,000 directly from points located outside the State of Maryland. I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, Sprinkler Fitters Local 536, a/w United Association of Plumbers, Pipefitters, Sprinkler Fitters and Apprentices of the United States and Canada, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

45

##### II. The Unfair Labor Practices

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

50

Robert Clark Jr.

Supervisor

Robert Clark Sr.

President and Owner

5 Gregory Leach

Designer

The Respondent, on or about March 13, 2003, and March 18, 2003, by either Robert Clark Sr. or Robert Clark Jr., by telephone, interrogated employees about their union membership.

10

The Respondent, by Robert Clark Sr.:

(a) on or about March 11 and March 12, 2003, by telephone, interrogated employees about their union membership;

15

(b) on or about March 11, 2003, by telephone, told employees he did not hire union members; and

20

(c) on or about March 14, 2003, at the Westminster, Maryland facility, told employees he did not hire union members.

On or about March 17, 2003, the Respondent, by Robert Clark, Jr., by telephone, interrogated employees about their union membership.

25

Since on or about the dates set forth opposite their respective names, Respondent has refused to consider for hire, and/or has refused to hire, the employees named below:

Jason Brown

March 17, 2003

30

Michael Gamber

March 18, 2003

Craig Roemer

March 13, 2003

Thomas Taylor

March 12, 2002

35

At the time the employees, named above applied for employment with the Respondent, or within a reasonable period thereafter, three or more jobs were available for which the employees, named above were qualified, and which they would have accepted. On or about June 23, 2003, the Respondent reduced the hourly wage rate paid to its employee Michael Genco. On or about July 25, 2003, the Respondent terminated its employee Michael Genco. The Respondent engaged in the conduct described above, because the named employees joined, supported, or assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

40

45

### Conclusions of Law

By the conduct described above the Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act, and by the conduct described above the Respondent has been discriminating with regard to the hire or tenure, or terms or conditions of employment, of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

50

The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent has violated Section 8(a)(3) and (1) by terminating Michael Genco and refusing to hire or consider for hire Jason Brown, Michael Gamber, Craig Roemer, and Thomas Taylor. The Respondent must be ordered to offer Michael Genco full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. Having further found that the Respondent had three or more jobs available for the named applicants, the Order must require the Respondent to offer them reinstatement to positions for which they applied, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them. If a fourth position is not available, the Respondent must be required to consider for hire that applicant for a future opening on a non discriminatory basis. *FES, A Division of Thermo Power, 331 NLRB 9 (2000)*. The Respondent must be ordered to make Genco, Brown, Gamber, Roemer, and Taylor whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful discrimination against them. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co., 90 NLRB 289 (1950)*, with interest as prescribed in *New Horizons for the Retarded, 283 NLRB 1173 (1987)*.

### ORDER

The Respondent, R.C. Associates, Inc., Westminster, Maryland, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Interrogating employees about their union membership.

(b) Telling employees that union members are not hired.

(c) Reducing the wage rate of and discharging employees, because of their union support or their concerted activities.

(d) Refusing to hire or consider for hire employee-applicants because they supported and assisted a union and engaged in concerted activities, or to discourage employees and other individuals from engaging in such activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

#### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer full reinstatement to Michael Genco to his former job or, if the job no longer exists to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(b) Make Michael Genco whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

5 (c) Within 14 days from the date of this Order, offer Jason Brown, Michael Gamber, Craig Roemer, and Thomas Taylor, in the order of their applications, instatement to positions for which they applied or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them. And if a fourth position is not available for the  
10 employee-applicant, consider him for employment for a future opening.

(d) Make Michael Genco, Jason Brown, Michael Gamber, Craig Roemer, and Thomas Taylor whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful discrimination against them, with interest, as set forth in the remedy section of this  
15 decision.

(e) Within 14 days from the date of this order, remove from its files all references to the reduction in wages, the unlawful discharge and the unlawful refusals to hire or consider for hire the applicants and within 3 days thereafter, notify them in writing that this has been done and  
20 that the unlawful conduct will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel  
25 records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Westminster, Maryland, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms  
30 provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the  
35 notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former  
40 employees employed by the Respondent at any time since March 11, 2003.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.  
45

---

<sup>1</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the  
50 National Labor Relations Board."

Dated, Washington, D.C., May 20, 2004.

5

---

Karl H. Buschmann  
Administrative Law Judge

10

15

20

25

30

35

40

45

50

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT interrogate employees about their union membership.

WE WILL NOT tell employees that we are not hiring union members.

WE WILL NOT reduce the wages and discharge employees, because of their union support or their concerted activities.

WE WILL NOT refuse to hire or consider for hire employee-applicants, because they support and assist a union and engage in concerted activities, or to discourage employees and other individuals from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of this Order, offer full reinstatement to Michael Genco to his former job or, if the job no longer exists to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make Michael Genco whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

WE WILL within 14 days from the date of this Order, offer Jason Brown, Michael Gamber, Craig Roemer, and Thomas Taylor, in the order of their applications, reinstatement to positions for which they applied or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them. And if a fourth position is not available, consider for employment the employee-applicant for a future opening.

WE WILL make Michael Genco, Jason Brown, Michael Gamber, Craig Roemer, and Thomas Taylor whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful discrimination against them, with interest, set forth in the remedy section of this decision.

WE WILL within 14 days from the date of this order, remove from its files all references to the reduction in pay, the unlawful discharge, and the unlawful refusals to hire or to consider for hire the applicants, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

WE WILL preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

R.C. ASSOCIATES, INC.

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

103 South Gay Street, The Appraisers Store Building, 8th Floor, Baltimore, MD 21202-4061

(410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (410) 962-3113.